Global Private M&A Guide - Limited External Content - Czech Republic

Common deal structures

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# What are the key private M&A deal structures?

In general, there are five key methods of structuring an acquisition:

Acquisition of shares (participation interests)

Acquisition of assets

Acquisition of an enterprise

Merger (i.e., amalgamation or consolidation) and demerger (demerger or spin-off)

Transfer of assets to a participant or shareholder/squeeze-out

# Which entity is likely to be the target company (on a share sale) or the seller (on an asset sale)?

The most commonly used types of companies are limited liability companies and joint-stock companies.

# What are the different types of limited liability companies?

There are limited liability companies and joint-stock companies.

*Limited liability companies*

A limited liability company may be established by one or more individual(s) or by one or more corporate entity/entities (there is no maximum limit on the number of participants). The liability of the participants is limited (up to the total unpaid value of the participation interests as registered in the Commercial Register).

Shares in a Czech limited liability company are represented by participation interest. If the constitutional document provides for it, the company can issue a participation certificate representing and incorporating the participation interest. The incorporation of the participation interest into the participation certificate will enable the participation interest to be easily transferred.

The minimum capital contribution of each participant is CZK 1. The company's founders may decide on a higher registered capital. Before filing a petition for registration of the limited liability company in the Commercial Register, the whole contribution premium and 30% of each participant's capital contribution must be paid (the remainder of the initial capital must be paid within five years of the company's registration). Subject to certain conditions, in-kind contributions may be made to the company's registered capital.

A limited liability company has no board of directors; instead, the company is represented by one or more executives. However, the executives can form a board if the constitutional document of the limited liability company provides for this. A limited liability company may establish a supervisory board as a controlling body, but establishing a supervisory board is not mandatory.

*Joint-stock companies*

A joint-stock company may be established by one or more individual(s) or legal entities. The shareholders of a joint-stock company are not liable for the company's obligations.

The registered capital of a joint-stock company is divided into shares, which may be issued in the form of bearer or registered shares. Registered shares can be issued as certified shares (in paper form) or can be maintained in the form of book-entry (computer-entry) securities in a special account at the Central Securities Depository or which can be deposited with a bank or another financial institution. To increase the transparency of the ownership structure of joint-stock companies, bearer shares can only be issued as book-entry securities or as securities deposited with a bank or another financial institution. Certified bearer shares that have not been deposited with a bank or another financial institution before 1 January 2014 are transformed automatically to certified registered shares with effect since 1 January 2014. A joint-stock company can issue either shares with a nominal value or shares without a nominal value. Those shares that do not have a nominal value each represent an identical share in the company's registered capital. Where shares without a nominal value are issued, the company may not issue any other shares with a nominal value.

The minimum registered capital of a joint-stock company is CZK 2 million. If a joint-stock company keeps books in euros, the minimum registered capital of a joint-stock company is EUR 80,000.

A joint-stock company can have either a monistic or a dualistic structure of corporate governance. A dualistic structure anticipates that the company's bodies will include (in addition to the general meeting) a board of directors and a supervisory board. A monistic structure means that (in addition to the general meeting) the company has a board of trustees as the only corporate body.

A joint-stock company must maintain web pages where it will publish certain statutory information (e.g., information that must be stated on business documents).

# Is there a restriction on shareholder numbers?

A limited liability company does not have any restrictions on the number of shareholders; neither does a joint-stock company.

# What are the key features of a share sale and purchase?

From a transactional point of view, a share transaction is much simpler and usually involves less documentation than an asset transaction. Generally, public licenses and permits are not affected.

# What are the key features of an asset sale and purchase?

In an asset sale, the parties are generally free to select the assets and liabilities they wish to transfer. The buyer will generally only be liable for those obligations of the acquired company that it expressly assumes. However, an asset acquisition is generally more complicated and involves more documentation than a share acquisition. Generally, public licenses and permits cannot be transferred but must be reapplied for by the buyer.

Czech law governs the sale of an "enterprise" as a TOGC separately. The same rules also apply to sales of a part of an enterprise as long as that part represents a "golden egg" (i.e., it is a material part of the enterprise, the sale of which would represent a material change of business/activities of the seller). The parties are free to exclude an individual asset or a liability as long the entire unit still represents an "enterprise."

In a sale of an "enterprise" (or its part), the selling entity transfers title to the enterprise (as a whole) to a buyer. Transactional documentation is generally more complicated and involves more documentation than in share acquisitions. The assets, contracts and liabilities of the seller pertaining to the enterprise pass to the buyer without the consent of creditors. The buyer, however, only takes over those liabilities that were known to it, or that the buyer must have reasonably expected. Generally, public licenses and permits cannot be transferred but must be reapplied for by the buyer.

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